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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OCT 24 2014

DOCKETED BY

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IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C. FOR
APPROVAL TO EXTEND ITS
CERTIFICATES OF CONVENIENCE AND
NECESSITY FOR WATER AND
WASTEWATER SERVICES.

DOCKET NO. WS-02987A-12-0136

DECISION NO. **74786****OPINION AND ORDER**

DATE OF HEARING:

April 18, 2013

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey¹

APPEARANCES:

Mr. Jeffrey Crockett, BROWNSTEIN HYATT
FARBER SCHRECK, LLP, on behalf of Johnson
Utilities L.L.C.; and

Ms. Bridget A. Humphrey and Mr. Matthew Laudone,
Staff Attorneys, Legal Division, on behalf of the
Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

On April 6, 2012, Johnson Utilities, L.L.C. (“Johnson” or “Company”) filed with the Arizona Corporation Commission (“Commission”) an application for approval to extend its Certificate of Convenience and Necessity (“CC&N”) to provide water and sewer services to areas known as Bella Vista North (located approximately 0.7 miles from the Town of Florence) and Merrill Ranch Expansion One (located within the limits of the Town of Florence).

On April 18, 2012, Johnson filed supplements to its application.

On May 7, 2012, the Commission’s Utilities Division (“Staff”) issued an Insufficiency Letter, stating that Johnson’s application had not met the sufficiency requirements as set forth in the Arizona Administrative Code (“A.A.C.”).

¹ Administrative Law Judge Yvette B. Kinsey conducted the hearing in this matter. The Recommended Opinion and Order was drafted by Administrative Law Judge Sasha Paternoster.

1 On May 23, 2012, Johnson filed responses to Staff's Insufficiency Letter.

2 On July 27, 2012, Johnson filed additional information in support of its application.

3 On November 30, 2012, Johnson filed an amended legal description which, at the developer's
4 request, deleted a portion of the requested extension area.

5 On December 20, 2012, Johnson filed an updated legal description.

6 On February 6, 2013, Staff filed a Sufficiency Letter in this docket stating that Johnson's
7 application met the sufficiency requirements as outlined in the A.A.C.

8 On February 12, 2013, by Procedural Order, the matter was scheduled for hearing and
9 procedural deadlines were established.

10 On March 8, 2013, Johnson filed a Notice of Appearance of Counsel and Request to Modify
11 Procedural Schedule.

12 On March 12, 2013, a Procedural Order was issued modifying the procedural deadline for
13 filing the Staff Report and Johnson's time to file objections to the Staff Report.

14 On March 20, 2013, Johnson filed a Notice of Filing Affidavit of Publication and Affidavit of
15 Mailing Notice.

16 On April 2, 2013, Staff filed a Staff Report in this matter, recommending an Order
17 Preliminary ("OP") with conditions.

18 On April 12, 2013, Johnson filed comments on the Staff Report.

19 On April 18, 2013, a full evidentiary hearing was held as scheduled before a duly authorized
20 Administrative Law Judge of the Commission. Johnson and Staff appeared through counsel and no
21 members of the public appeared to present public comments. At the conclusion of the hearing, Staff
22 was instructed to file a closing brief; the Company was instructed that it may file a response; and the
23 Company was directed to file a late-filed exhibit related to Arizona Department of Environmental
24 Quality ("ADEQ") violations.

25 On April 19, 2013, Johnson docketed a Notice of Filing Late-Filed Exhibits.

26 On May 8, 2013, Staff filed a request for an extension of time, from May 13, 2013 to May 22,
27 2013, to file its closing brief. Staff's request stated that the Company did not oppose Staff's request
28

1 for an extension of time to file Staff's closing brief. Further, Staff requested that the time for the
2 Company to file a responsive brief be extended accordingly.

3 On May 13, 2013, a Procedural Order was issued granting Staff's request for additional time
4 to file its closing brief and for Johnson to file a responsive brief. The timeclock in this matter was
5 also suspended.

6 On May 21, 2013, Johnson filed a Notice of Late Filing Updated Preliminary Engineering
7 Analysis.

8 On May 22, 2013, Staff filed its Closing Brief.

9 On June 10, 2013, Johnson filed a Request to Extend Deadline for Filing Response to Staff's
10 Closing Brief. Johnson's request stated that Johnson and Staff had a scheduled meeting on June 14,
11 2013, which might lead to a narrowing of the issues in this case. Therefore, Johnson requested an
12 extension of time from June 10, 2013 to June 17, 2013, for Johnson to file a responsive brief in this
13 matter. Johnson's request stated that Staff did not oppose Johnson's requested extension of the time
14 deadline.

15 On June 11, 2013, by Procedural Order, Johnson's request to extend the deadline for filing its
16 response to Staff's closing brief was granted.

17 On June 17, 2013, Johnson filed a second Request to Extend Deadline for Filing Response to
18 Staff's Closing Brief. In its request, Johnson stated that Johnson and Staff met on June 14, 2013, in
19 an effort to clarify and narrow the disagreements between the parties regarding Staff's
20 recommendations as listed in Staff's Closing Brief. Further, Johnson's request stated that the
21 meeting was productive and the parties would like some additional time for further discussions and to
22 gather some additional information. Johnson requested an extension of time from June 17, 2013 to
23 July 1, 2013, to file its response to Staff's Closing Brief and that the time deadline for Staff to file its
24 reply be extended to July 15, 2013. Johnson stated that Staff supported Johnson's request.

25 On the same date, Staff docketed a Notice of Filing Supplement to Closing Brief, indicating
26 that Staff had learned ADEQ closed two Notices of Violations ("NOVs") issued to Johnson in
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28

1 October and November of 2012, but that two additional NOV²s were issued on May 31, 2013,² and
2 that the NOV²s had been docketed in Docket Nos. WA-02987A-99-0583; WS-02987A-00-0618; WS-
3 02987A-00-0774; and WS-02987A-00-0784. Staff stated that, based on Johnson's continuing non-
4 compliance with ADEQ, Staff continues to recommend the issuance of an OP in this matter.

5 On June 19, 2013, by Procedural Order, Johnson's second request to extend the deadline for
6 filing a responsive brief was granted.

7 On July 3, 2013, Johnson filed a Request for Retroactive Extension of the Deadline for Filing
8 Response to Staff's Closing Brief.

9 On July 5, 2013, by Procedural Order, Johnson's third request for an extension of the time
10 deadline to file its responsive brief was granted.

11 On July 8, 2013, Johnson filed its Response to Staff's Closing Brief and Supplement to
12 Closing Brief.

13 On August 6, 2013, Staff filed its Notice of Filing Reply.

14 On August 9, 2013, Staff filed a Notice of Errata, correcting an error in its Recommendation
15 Number 5 of its reply brief.

16 On September 20, 2013, Johnson filed a Motion for Leave to Late File Comments on Staff's
17 Modified Recommendations as set forth in Staff's Reply and Notice of Filing Letters from ADEQ
18 Resolving Notices of Violations.³

19 On October 7, 2013, Pulte Home Corporation ("Pulte") filed Public Comment in support of
20 the application in this docket.

21 On October 9, 2013, Staff filed a Stipulation to Extension of Time and for Leave to File
22 Comments.

23 On October 17, 2013, Staff filed its Response to Johnson's Motion for Leave to Late File
24 Comments on Staff's Modified Recommendations as set forth in Staff's Reply and Notice of Filing
25 Letters From ADEQ Resolving Notices of Violation, stating that additional information submitted by
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27 ² In their filing, Staff cited the date the NOV²s were issued as May 31, 2013. The correct date is May 30, 2013.

28 ³ The filing included two letters from ADEQ pertaining to the May 30, 2013 NOV²s stating that the documenting compliance provisions had been met.

1 the Company did not warrant the issuance of an extension of the Company's CC&Ns with conditions,
2 but that Staff continued to recommend an OP in this matter.

3 On December 31, 2013, Johnson filed, in Docket No. WS-02987A-13-0477, an Application
4 for Approval of the Sale and Transfer of Assets and Conditional Cancellation of Certificate of
5 Convenience and Necessity ("Transfer Docket"). Johnson's application requested Commission
6 approval for the sale and transfer of all its utility assets and operations to the Town of Florence
7 ("Town"), an Arizona municipality, and conditional cancellation of Johnson's CC&N. Johnson
8 stated that its pending applications with the Commission, including this matter, would be withdrawn
9 once the Commission deemed Johnson's application in the Transfer Docket sufficient.⁴

10 On February 24, 2014, Johnson filed a Request for Recommended Opinion and Order
11 ("ROO") in this docket, requesting that the Hearing Division move forward and submit a ROO for
12 the Commission's consideration on Johnson's CC&N extension application in this docket.

13 On March 3, 2014, by Procedural Order, Staff was directed to respond to Johnson's request
14 on or before March 17, 2014, and Johnson was permitted to reply to Staff's Response on or before
15 March 31, 2014.

16 On March 11, 2014, Staff filed its Response to Request for Recommended Opinion and
17 Order.

18 On May 23, 2014, Johnson filed a Motion to Withdraw Application in the Transfer Docket.

19 On the same date, Johnson filed a Renewed Request for Recommended Opinion and Order.

20 On June 25, 2014, a Procedural Order was issued directing Staff to file an update and clarify
21 its position and its rationale as it related to the status of Johnson's NOV's and Staff's recommendation
22 for an OP. The Procedural Order also instructed the Company to file a response to Staff's filing.

23 On July 1, 2014, Johnson filed copies of ADEQ Wastewater Compliance Status Reports⁵ for
24 its four operating wastewater treatments plants and ADEQ Drinking Water Compliance Status
25 Reports⁶ for its two public water systems. For Anthem at Merrill Ranch and Section 11 wastewater
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27 ⁴ Johnson currently has pending CC&N extension applications in Docket Nos. WS-02987A-12-0136, WS-02987A-13-
0284, and WS-02987A-13-0310, to extend its water and sewer CC&N.

28 ⁵ The four ADEQ Wastewater Compliance Status Reports are each dated January 31, 2014.

⁶ The ADEQ Drinking Water Compliance Status Reports are both dated February 7, 2014.

1 treatment plants, ADEQ found the Company's facilities to be in compliance. For the Santan and
2 Pecan wastewater treatment plants, ADEQ determined the Company was not in violation at a level at
3 which ADEQ will take action. Both of Johnson's water systems were found to be delivering water
4 that meets water quality standards.

5 On July 2, 2014, pursuant to the June 25, 2014, Procedural Order, Staff filed its Status
6 Update.

7 On July 9, 2014, Johnson filed its Response to Staff's Status Update and Notice of Filing
8 Approvals to Construct for Bella Vista Farms Phase One, providing a copy of the Approval to
9 Construct ("ATC") for Bella Vista Farms Phase One and requesting some of Staff's recommended
10 compliance dates be extended given the passage of time since the filing of its application.

11 On July 10, 2014, Pulte filed a Second Public Comment in support of the application in this
12 docket.

13 On July 24, 2014, Staff filed its Reply to Johnson's Response to Staff's Status Update and
14 Notice of Filing Approvals to Construct for Bella Vista Farms Phase One, in which Staff reiterated its
15 position that an OP was appropriate until Johnson files updated ADEQ Compliance Status Reports
16 indicating that all water and wastewater systems are in compliance with ADEQ regulations by
17 December 31, 2014. Staff stated that its recommendation for the issuance of an OP continues given
18 that the Company remains out of compliance with ADEQ, specifically pointing to four ADEQ
19 Wastewater Compliance Reports from July 2014 which indicated that two of Johnson's systems were
20 in substantial compliance while the other two systems were out of compliance. However, Staff
21 amended its recommendations to remove the ATC conditions for Bella Vista Farms Phase One and
22 extended the deadlines in Staff's Recommendations 3, 7, and 8 by two years.

23 On September 4, 2014, Pulte filed a Third Public Comment requesting that the Commission
24 grant a conditional CC&N to Johnson for all areas within the requested CC&N area.

25 On September 5, 2014, Johnson filed Exceptions which attached updated Wastewater
26 Compliance Status Reports dated August 27, 2014, for the Pecan and San Tan Wastewater Treatment
27 Plants ("WTPs"), which indicated that those plants are operating in compliance with applicable
28

1 requirements of ADEQ, with no material violations that would prompt ADEQ to take enforcement
2 action.

3 Also on September 5, 2014, Staff filed a Request for Clarification of Recommended Order
4 and Opinion, explaining the basis for Staff's recommendation for an OP for Merrill Ranch Expansion
5 One Units 59A, 59C, 59D, and 59E is because the planned date of construction is far into the future.

6 On October 2, 2014, Staff filed updated comments stating that based upon Johnson's ADEQ
7 Compliance Status report for Pecan dated August 27, 2014 and the September 18, 2014 report for San
8 Tan, neither WTP was in violation of ADEQ requirements at a level where ADEQ would take any
9 action. Staff indicated it did not oppose the issuance of a conditional CC&N for each of the
10 requested CC&N extension areas except for the last four units of Merrill Ranch Expansion One, for
11 which it still recommends OPs.

12 On October 10, 2014, Pulte filed a Fourth Public Comment in this docket, again requesting
13 that the Commission grant a conditional CC&N to Johnson for all areas within the requested CC&N
14 extension area.

15 On October 14, 2014, Johnson filed its Proposed Amendment No. 2.

16 Upon receipt of the post-hearing filings, the matter was taken under advisement pending
17 submission of a Recommended Opinion and Order of the Commission.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 **Background**

23 1. Johnson is an Arizona public service corporation engaged in the business of providing
24 water and wastewater utility services in portions of Pinal County, Arizona.

25 2. Johnson received its initial CC&N in Commission Decision No. 60223 (May 27,
26 1997), and the Company's CC&N has been extended in various subsequent dockets.

27 3. Johnson's service area includes communities between Queen Creek and Florence in
28 Pinal County.

1 4. Johnson operates two water systems, Johnson Ranch and Anthem at Merrill Ranch,
2 and four wastewater systems, Pecan, San Tan, Section 11, and Anthem. As of December 2012, the
3 Company provided water service to approximately 22,170 service connections and served
4 approximately 29,240 wastewater service laterals.⁷

5 5. Johnson is in good standing with the Corporations Division of the Commission.

6 6. On April 6, 2012, Johnson filed an application with the Commission to add two and a
7 half square miles to its water CC&N and approximately one half square mile to its sewer CC&N.
8 Specifically, Johnson's application seeks authority to extend its water CC&N to serve Bella Vista
9 Farms (two square miles) and its water and sewer CC&Ns to serve Merrill Ranch Expansion One
10 (one half square mile).

11 7. The proposed extension area is more fully described in Exhibit A, attached hereto and
12 incorporated herein by reference.

13 8. On April 2, 2013, after several revisions and supplemental submissions to Johnson's
14 original application, Staff filed its Staff Report recommending the issuance of an OP with conditions.
15 The Company filed comments in response to Staff's Recommendations, objecting to Staff's
16 Recommendation for the issuance of an OP and requesting that the Commission grant a conditional
17 CC&N instead.

18 9. Staff and Johnson engaged in discussions in an effort to narrow the issues and, as a
19 result of those discussions, Staff filed a Notice of Filing Reply in which it made its final
20 recommendations with regard to this application. Staff recommended that all areas requested in the
21 application be granted subject to an OP. Once the Company resolves the NOV's, Staff recommends
22 that the Company receive a conditional CC&N for all requested extension areas except Merrill Ranch
23 Expansion One Units 59A, 59C, 59D, and 59E. For those specified units, Staff recommended that
24 those areas continue to be approved subject to an OP until ADEQ ATCs water and wastewater
25 facilities for the first parcel of each specified Unit are docketed. Staff's OP recommendations are as
26 follows:

27
28 ⁷ Exhibit S-1 at Exhibit 1.

- 1 1. The Commission issue an Order Preliminary for the Bella Vista Farms area
2 requested by the Company for water service and for the Merrill Ranch
3 Expansion One area requested by the Company, for water and wastewater
4 service with the following conditions:
- 5 2. The Company file updated ADEQ Compliance Status Reports indicating that
6 all water and wastewater systems are in compliance with ADEQ regulations
7 by December 31, 2014.
- 8 3. That the Company docket for Merrill Ranch Expansion One, as a compliance
9 item, in this docket, no later than May 1, 2021, for Unit 59A; November 1,
10 2021, for Unit 59D; May 1, 2022, for Unit 59C; and November 2022, for Unit
11 59E, a copy of the ADEQ ATC for water and wastewater facilities needed to
12 serve the first parcel in each Unit.⁸
- 13 4. That Staff be required to file, within thirty days of the Company's filings for
14 each Phase or Unit described in recommendation 3 above, a Staff response to
15 the filings for each Unit, in the form of a Proposed Order confirming
16 compliance and granting a conditional CC&N for an extension to include the
17 areas included in the Order Preliminary; and that the Proposed Order
18 confirming compliance should then be scheduled as soon as possible for a
19 Commission vote.
- 20 5. That, if the Company does not timely comply with the requirements contained
21 in Staff Recommendations 2 and 3 for any Units, the Order Preliminary
22 approved herein shall be deemed null and void for those Units.

23 10. Once the Company resolves its ADEQ NOV's and the Commission approves the grant
24 of conditional CC&Ns for the requested areas, Staff's additional conditional CC&N
25 recommendations are that:

- 26 6. The Company be required to provide separate wastewater descriptions for each
27

28 ⁸ These dates reflect Staff's amended recommendations filed July 24, 2014.

wastewater system (for example, separate wastewater flows including peak flow and average flow) in future Commission Annual Reports, beginning with the 2013 Annual Report to be filed in 2014.

7. For Bella Vista Farms Phases Two through Five, that the Company file, as a compliance item in this docket, a copy of the ADEQ ATC for water facilities needed to serve the first parcel in the requested extension areas by the following dates: for Phase Two, by August 1, 2016 for parcels C and D and August 1, 2017 for parcels E and F; for Phase Three by June 1, 2017; for Phase Four by December 1, 2019; and for Phase Five, by August 1, 2024.⁹

8. For Merrill Ranch Expansion One Units 53A, 53B, 55A, 55C, 55B, 57A, 57B, 59B, and Phase 3, the Company file, as a compliance item in this docket, a copy of the ADEQ ATC for water and wastewater facilities needed to serve the first parcel in the requested extension areas by the following dates: for Unit 53A, by May 2017; for Unit 53B, by November 2017; for Unit 55A, by May 2018; for Unit 55C, by November 2018; for Unit 55B, by May 2019; for Unit 59B, by November 2020; and for Phase 3, by December 1, 2018.¹⁰

Proposed Extension Areas

Bella Vista Farms

11. Bella Vista Farms consists of approximately two square miles and is located 0.7 miles from the Town of Florence. This area falls within Johnson's existing wastewater CC&N and, as such, the Company is only seeking to extend its water CC&N to Bella Vista Farms.

12. Johnson has received requests for service from developers and the community college district which covers the entire proposed extension area with the exception of 2.27 acres.¹¹

13. The Bella Vista Farms area is currently served by Johnson's Section 11 wastewater

⁹ These dates are Staff's amended recommendations filed July 24, 2014. Also, Johnson has met compliance for Bella Vista Farms Phase One.

¹⁰ No compliance filing dates appear for Merrill Ranch Expansion One Units 57A or 57B. Further, these compliance dates reflect Staff's amended recommendations filed on July 24, 2014

¹¹ The remaining parcel is owned by Salt River Project and is surrounded by land that have all requested service. According to the Staff Report, Salt River Project has no objection to its land being included in the area in which Johnson seeks to extend its CC&N.

1 system. The Company will provide water services to this area via its Johnson Ranch water system.

2 14. The Company anticipates the development phases for the Bella Vista Farms area as
3 follows:¹²

4 Planning Areas	Estimated Development Start Dates
5 Phase 1	Parcel A – Community College under 6 development 7 Parcel B – Fall 2014
8 Phase 2	Parcels C & D – Fall 2014 9 Parcels E & F – Fall 2015
10 Phase 3	Parcels U, X, & Y – 3 rd quarter 2015
11 Phase 4	Parcels V & W – 1 st quarter 2018
12 Phase 5	Parcels AA & Z – 3 rd quarter 2022

13 **Merrill Ranch Expansion One**

14 15. Merrill Ranch Expansion One consists of approximately 0.5 square miles and is
15 located within the Town of Florence. According to a letter docketed by Johnson, the Town supports
16 the Company's application to provide water and wastewater service to the area.¹³

17 16. The proposed extension area for Merrill Ranch Expansion One is solely owned by
18 SWVP-TIS MR LLC ("Southwest Value Partners"). According to the Staff Report, this parcel is to
19 be purchased by Pulte upon approval of the CC&N in this docket. Pulte is the developer for Anthem
20 at Merrill Ranch, a large master planned development. Both Southwest Value Partners and Pulte
21 have provided requests for service to Johnson for the area.

22 17. The Merrill Ranch Expansion One area would be served by the Anthem at Merrill
23 Ranch water system and the Anthem wastewater system.

24 ...

25 ...

26 ...

27 ¹² Exhibit S-1 at Exhibit 1.

28 ¹³ Amendment to Application, April 18, 2014, Attachment 1.

18. The Company anticipates the development phases for the Merrill Ranch Expansion One area as follows:¹⁴

Planning Area	Estimated Development Start Date
Unit 53A	June 2015
Unit 53B	December 2015
Unit 55A	June 2016
Unit 55C	December 2016
Unit 55B	June 2017
Unit 57A	December 2017
Unit 57B	June 2018
Unit 59B	December 2018
Unit 59A	June 2019
Unit 59D	December 2019
Unit 59C	June 2020
Unit 59E	December 2020
Phase III	2017

19. Johnson currently provides utility service to portions of the Anthem at Merrill Ranch community that has previously been built out. Pulte's public comments state that the purpose of including the Merrill Ranch Expansion One project in Johnson's CC&N extension application was to secure the water and sewer service on a going forward basis for both the landowner and Pulte.

Existing Water and Wastewater Facilities

Water

20. According to Staff's Engineering Report, the Johnson Ranch water system includes 17 wells which produce approximately 10,600 gallons per minute ("GPM") and 12 storage tanks with a storage capacity totaling 6.25 million gallons. Johnson's distribution system served approximately 20,170 service connections as of December 2012.¹⁵

21. Staff's Engineering Report states the Anthem water system consists of four wells

¹⁴ Exhibit S-1 at Exhibit 1.

¹⁵ *Id.*

1 producing over 2,500 GPM, two storage tanks totaling 1.5 million gallons, and a distribution system
2 that served approximately 2,000 service connections as of December 2012.¹⁶

3 22. Based on the historical growth rate, Staff predicts Johnson's water service area could
4 grow to approximately 25,500 connections over the next five years.¹⁷

5 23. Staff has concluded that Johnson's entire water system has adequate capacity or can be
6 upgraded to serve existing customers and reasonable growth, including anticipated growth in the
7 proposed extension area.

8 **Wastewater**

9 24. Johnson operates four wastewater systems: Pecan, San Tan, Section 11, and Anthem.
10 The Company records plant and flow data for each of its wastewater systems as if they were one
11 integrated system.

12 25. The Pecan system provides 2.0 million gallon per day ("MGD") and includes an
13 extended aeration water reclamation plant ("WRP") that served approximately 10,515 service
14 laterals. The San Tan system provides 2.0 MGD using an extended aeration WRP that served
15 approximately 7,275 service laterals. The Section 11 WRP provides 1.6 MGD using an anaerobic
16 lagoon wetland WRP that served approximately 6,750 service laterals. The Anthem system provides
17 1.5 MGD using an extended aeration WRP that served approximately 4,700 service laterals.¹⁸

18 26. As of December 2012, the four systems served a total of approximately 29,240 service
19 laterals. Based on the historical growth rate, Staff predicts Johnson's wastewater service area could
20 grow to approximately 34,000 service laterals over the next five years.¹⁹

21 27. Staff concluded that Johnson's wastewater system has adequate capacity or will
22 develop additional production, storage, and wastewater capacity to serve existing customers and
23 reasonable growth.

24 ...

25 ...

26 _____
27 ¹⁶ *Id.*

28 ¹⁷ *Id.*

¹⁸ All service lateral amounts are as of December 2012.

¹⁹ Exhibit S-1 at Exhibit 1.

Proposed Plant Facilities

28. Johnson estimates that the cost for additional plant facilities to serve Bella Vista Farms Phase 1 and Phase 2 will be \$9,006,290, and that the cost for the Merrill Ranch Expansion One will be \$4,416,800.

29. Johnson proposes to pay for the facilities needed to serve these areas through advances in aid of construction, hook up fees, and main extension agreements.²⁰

30. Staff reviewed Johnson's estimated costs for facilities needed in the proposed extension area and concluded that the costs were reasonable. However, Staff made no "used and useful" determination for the proposed water and wastewater plant facilities and no particular treatment should be inferred for rate making or rate base purposes.

Certificate of Approval to Construct

31. The Company has submitted the ADEQ Certificate of ATC for the water facilities needed to serve the Bella Vista Farms Phase One proposed area.

32. Johnson has not submitted the ADEQ ATCs for water and wastewater facilities for the remainder of the proposed extension area.

Arizona Department of Water Resources ("ADWR") Compliance

33. According to the Staff Report, the Johnson Ranch Water System is located within the Phoenix Active Management Area ("AMA") and ADWR has determined that Johnson is in compliance with AMA reporting and conservation rules.²¹

34. The Staff Report also notes that the Anthem Water System is within the Pinal AMA and ADWR has determined that Johnson is in compliance with AMA reporting and conservation rules.²²

ACC Compliance

35. Johnson has no outstanding compliance issues with the Commission.

36. Johnson has an approved Curtailment Tariff, Backflow Prevention Tariff, and approved Best Management Practice ("BMP") Tariffs on file with the Commission.

²⁰ Exhibit A-1.

²¹ Exhibit S-1 at Exhibit 1.

²² *Id.*

1 **ADEQ Compliance**

2 37. Staff's Supplement disclosed that ADEQ had issued two new NOV's to Johnson on
3 May 30, 2013.²³ Staff also docketed ADEQ Wastewater Compliance Status Reports dated July 14,
4 2014 showing that the Pecan and San Tan wastewater systems were out of compliance due to
5 discharge limit exceedances. ADEQ also noted the San Tan system had additional compliance issues
6 – a self-monitoring report form missing parameter and the open May 30, 2013 NOV.

7 38. Official notice is taken of Decision No. 70849 (March 17, 2009), Decision No. 73236
8 (June 26, 2012), and ADEQ NOV's issued to Johnson on October 12, 2012 and November 29, 2012.

9 **Discussion**

10 39. In this case, Staff has stated that it recommends the issuance of an OP rather than
11 denial of the application, a CC&N with conditions, or a conditional CC&N.²⁴ Staff explains that for
12 either a conditional CC&N or a CC&N with conditions to be granted, two requirements are needed:
13 1) compliance with ADEQ and 2) submission of a complete description of the proposed project,
14 including a preliminary engineering report. Further, Staff states an OP “disposes of a CC&N
15 application in a way that does not grant a CC&N, but sets out conditions upon which a utility may
16 demonstrate that a CC&N ultimately will be appropriate.”²⁵

17 40. On September 5, 2014, Johnson filed copies of updated ADEQ Wastewater
18 Compliance Status Reports dated August 27, 2014, showing that the Pecan and San Tan WTPs are
19 operating in compliance with applicable requirements of ADEQ, with no material violations that
20 would prompt ADEQ to take enforcement action. In addition, the updated status reports show that
21 Johnson has met the compliance conditions associated with the May 30, 2013 NOV at the San Tan
22 WTP. On October 2, 2014, Staff filed ADEQ compliance status reports indicating that neither the
23 San Tan WTP nor the Pecan WTP were in violation of ADEQ requirements at a level where ADEQ
24 would take any action.

25 ...

26 ²³ Johnson docketed copies of the NOV's in Docket Nos. WS-02987A-99-0583, WS-02987A-00-0618, W-02234A-00-
27 0371, W-02859A-00-0774, and W-01395A-00-0784. Official notice is taken of the Company's compliance filings in
these dockets.

28 ²⁴ Staff's Closing Brief at p. 4.

²⁵ *Id.* at p. 1.

1 41. Although the application lacked the required preliminary engineering reports pursuant
2 to A.A.C. R14-2-402(B)(5)(n), Staff acknowledges that in this case it prematurely deemed Johnson's
3 application sufficient. A preliminary engineering report dated May 18, 2013 was subsequently
4 submitted for Merrill Ranch Expansion One Units 53A, 53B, 55A, 55C, 57A, 57B, 59A, 59C, 59D,
5 and 59E. Staff continues to recommend an OP for Merrill Ranch Expansion One Units 59A, 59C,
6 59D, and 59E.

7 42. Johnson's and Staff's most recent filings show that the Company's Pecan and San Tan
8 WTPs are operating in compliance with applicable ADEQ requirements, with no material violation
9 that would prompt ADEQ to take enforcement action. Staff does not oppose the issuance of a
10 conditional CC&N for each of the requested CC&N extension areas except the Merrill Ranch
11 Expansion One Units 59A, 59C, 59D, and 59E.

12 43. In addition, the filing by Johnson on September 5, 2014 shows that the Company has
13 met the compliance conditions associated with the May 30, 2013 NOV at the San Tan WTP.

14 44. Staff's modified recommendations carve out four Units in the Merrill Ranch
15 Expansion One extension area that are to remain subject to an OP even after ADEQ compliance is
16 shown. When asked to clarify Staff's reasoning for the continuing need for an OP once Johnson
17 establishes it is in compliance with ADEQ requirements, Staff filed a Status Update stating, "Staff
18 has not changed its position or rationale from what was expressed in the closing and reply briefs that
19 were filed on May 22, 2013 and August 6, 2013 respectively in this docket." We can find no
20 discussion or explanation by Staff as to why Units 59A, 59C, 59D, and 59E should remain subject to
21 an OP once ADEQ compliance is demonstrated. Without an articulable basis for issuing a continuing
22 OP for the four areas within an 18-phase extension area, we find it appropriate to subject these areas
23 to the same requirements as the remainder of the extension areas. As such, these four areas should be
24 reviewed for a conditional CC&N along with the remainder of the extension areas.

25 45. In addition, due to the passage of time, it is reasonable to require Johnson to provide
26 separate wastewater descriptions for each of its wastewater systems beginning with filing of its 2014
27 Annual Report to be filed in 2015.

28 ...

CONCLUSIONS OF LAW

1
2 1. Johnson Utilities, L.L.C. is a public service corporations within the meaning of Article
3 XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

4 2. The Commission has jurisdiction over Johnson Utilities, L.L.C. and the subject matter
5 of the Application.

6 3. Notice of the application was provided in accordance with the law.

7 4. There is a public need and necessity for water and wastewater service in the proposed
8 extension areas described in Exhibit A, attached hereto and incorporated herein by reference.

9 5. Johnson Utilities, L.L.C. is a fit and proper entity to receive a Conditional Certificate
10 of Convenience and Necessity for the proposed extension areas.

11 6. Staff's recommendations, as modified herein, are reasonable and should be adopted.

ORDER

12
13 IT IS THEREFORE ORDERED that Johnson Utilities, L.L.C.'s application for an extension
14 of its water and sewer Certificate of Convenience and Necessity to include the area described in
15 Exhibit A, attached hereto, is hereby conditionally granted subject to the following Ordering
16 Paragraphs.

17 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. shall file for Merrill Ranch
18 Expansion One, as a compliance item in this docket, no later than May 1, 2021 for Unit 59A;
19 November 1, 2021 for Unit 59D; May 1, 2022 for Unit 59C; and November 1, 2022 for Unit 59E, a
20 copy of the Arizona Department of Environmental Quality Approval to Construct for water and
21 wastewater facilities needed to serve the first parcel in each Unit of the proposed extension areas.

22 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. shall file for Bella Vista Farms
23 Phases Two through Five, as a compliance item in this docket, no later than August 1, 2016 for Phase
24 Two for parcels C and D, and August 1, 2017 for parcels E and F; June 1, 2017 for Phase Three;
25 December 1, 2019 for Phase Four, and August 1, 2024 for Phase Five, a copy of the Arizona
26 Department of Environmental Quality Approval to Construct for water facilities needed to serve the
27 first parcel in the requested extension areas.

28 ...

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. shall file for Merrill Ranch Expansion One, as a compliance item in this docket, by May 1, 2017 for Unit 53A; November 1, 2017 for Unit 53B; May 1, 2018 for Unit 55A; November 1, 2018 for Unit 55C; May 1, 2019 for Unit 55B; November 1, 2019 for Unit 57A; May 1, 2020 for Unit 57B; November 1, 2020 for Unit 59B; and December 1, 2018 for Phase 3, a copy of the Arizona Department of Environmental Quality Approval to Construct for water and wastewater facilities needed to serve the first parcel in the requested extension areas.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. shall provide separate wastewater descriptions for each wastewater system (for example, separate wastewater flows including peak flow and average flow) in future Commission Annual Reports, beginning with the 2014 Annual Report filed in 2015.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

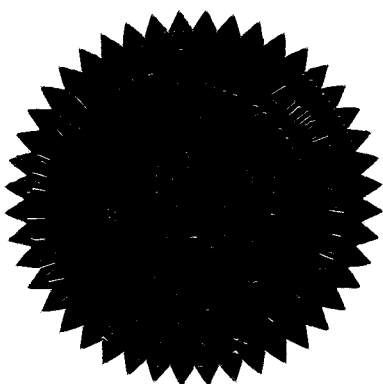
CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of October 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SP:ru

1 SERVICE LIST FOR: JOHNSON UTILITIES L.L.C.

2 DOCKET NOS.: WS-02987A-12-0136

3

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EXHIBIT A

CC & N Legal Description for T3S, R8E for water only

All of the West Half of Section 14;

All of Section 15;

All of Section 16 not presently certificated for water to Johnson Utilities Co.; all in Township 3 South, Range 8 East, being more particularly described as follows:

Beginning at the Southeast Corner of Section 16;

Thence North $37^{\circ} 07' 25''$ West along the Southern Pacific Railroad Right-of-Way, a distance of 6619.56 feet to a point on the North line of Section 16;

Thence North $89^{\circ} 59' 17''$ East along the North Line of Section 16, 15, and 14, a distance of 11,915.14 feet to the North Quarter Corner of Section 14;

Thence South $00^{\circ} 00' 00''$ East, along the North-South Mid-Section Line of Section 14 a distance of 5280.00 feet to the South Quarter Corner of Section 14;

Thence South $89^{\circ} 59' 47''$ West along the South Section Lines of Sections 14, 15, and 16 a stance of 7920.00 feet the Southeast Corner of Section 16 and the TRUE POINT OF BEGINNING;



Johnson Utilities
Water and Sewer CC&N Request – Boundary Description

A Parcel of Land lying within the Northwest Quarter of Section 29 and Section 30, Township 4 South, Range 9 East, of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

Commencing at the North Quarter Corner of Section 30 (#5 RB w/2" AC LS 21065, Found), said point being the POINT OF BEGINNING from which the Northeast Corner of Section 30 (#5 RB w/2" AC LS 21065) bears South 89 degrees 55 Minutes 26 Seconds East (Basis of Bearing), a distance of 2622.97 feet;

Thence, South 89 Degrees 55 Minutes 26 Seconds East, a distance of 2622.97 feet;

Thence, North 89 Degrees 54 Minutes 12 Seconds East, a distance of 698.65 feet;

Thence Southwesterly, an arc distance of 1126.18 feet along a curve to the Right having a radius of 3932.50 feet and a central angle of 16 Degrees 24 Minutes 30 Seconds (Radial Bearing North 61 Degrees 52 Minutes 32 Seconds West);

Thence, South 44 Degrees 31 Minutes 58 Seconds West, a distance of 550.46 feet;

Thence Southerly, an arc distance of 1983.37 feet along a curve to the Left having a radius of 1917.50 feet and a central angle of 59 Degrees 15 Minutes 50 Seconds (Radial Bearing South 45 Degrees 28 Minutes 02 Seconds East);

Thence, South 14 Degrees 43 Minutes 53 Seconds East, a distance of 375.12 feet;

Thence, South 75 Degrees 16 Minutes 42 Seconds West, a distance of 1688.93 feet;

Thence Westerly, an arc distance of 148.89 feet along a curve to the Left having a radius of 2804.79 feet and a central angle of 02 Degrees 58 Minutes 40 Seconds (Radial Bearing South 14 Degrees 43 Minutes 18 Seconds East);

Thence, North 89 Degrees 57 Minutes 08 Seconds West, a distance of 2720.62 feet;

Thence, North 00 Degrees 25 Minutes 48 Seconds West, a distance of 1321.69 feet;

Thence, North 00 Degrees 25 Minutes 29 Seconds West, a distance of 1322.48 feet;

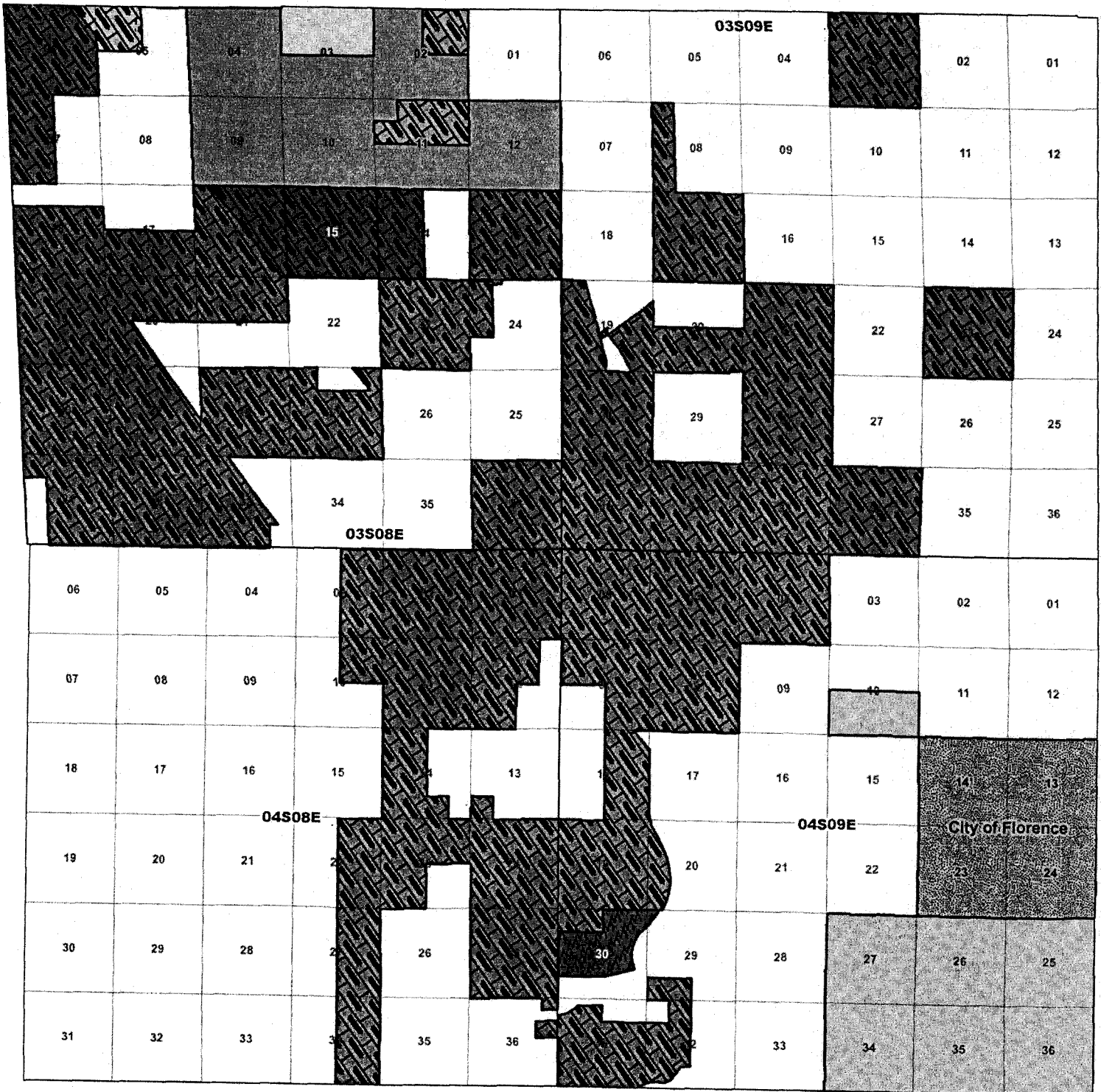
Thence South 89 Degrees 55 Minutes 50 Seconds East, a distance of 2641.28 feet;

Thence North 00 Degrees 07 Minutes 47 Seconds West, a distance of 1321.63 feet to the POINT OF BEGINNING.

Containing 348.19 acres, more or less.

PINAL COUNTY

DOCKET NO. WS-02987A-12-0136



Diversified Water Utilities



H2O, Inc.



Johnson Utilities, LLC



Sun Valley Farms Unit VI Water Company



Johnson Utilities, LLC
Docket No. WS-02987A-12-0136
2nd Amended Application for Extension

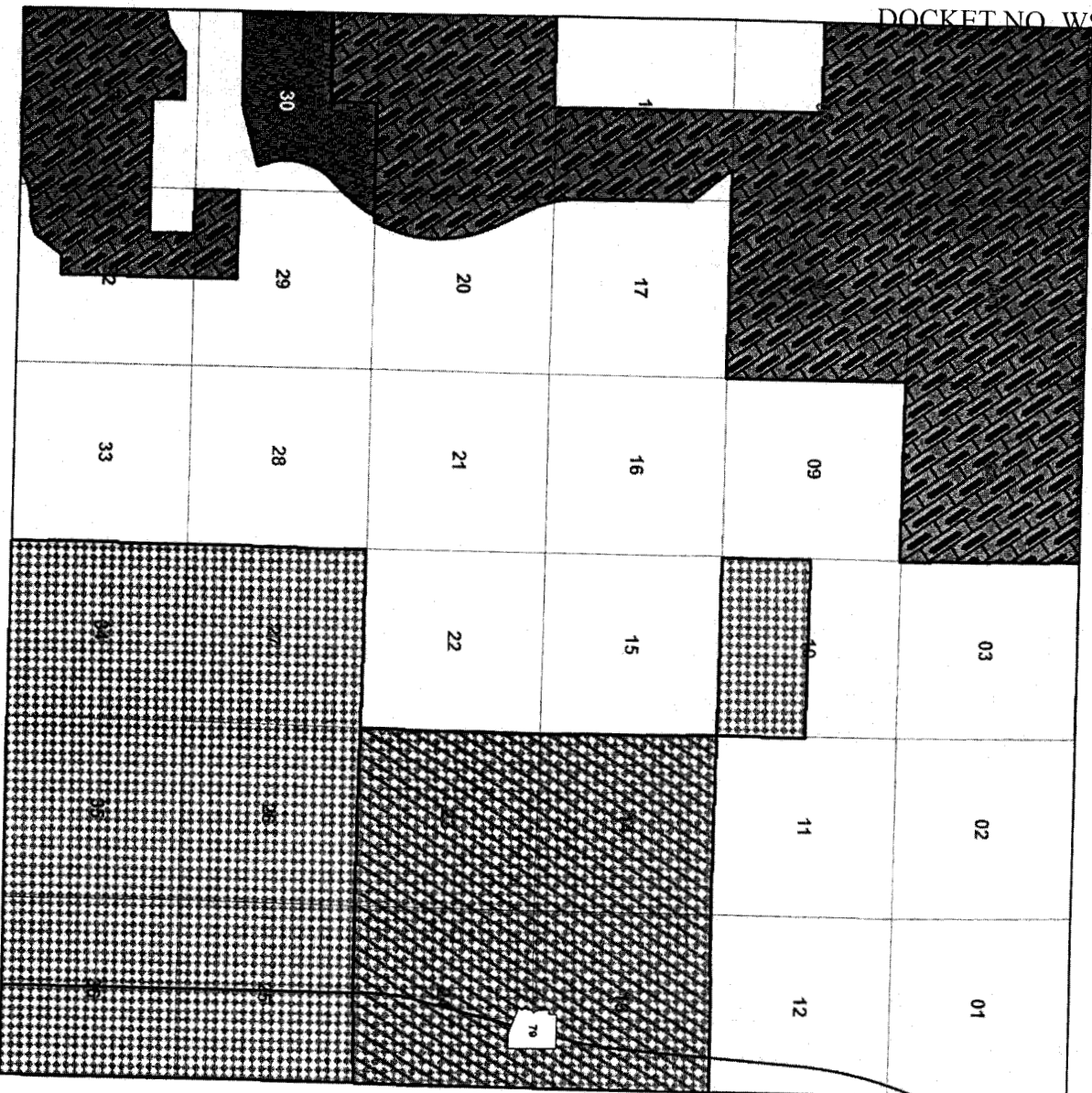


DECISION NO. 74786


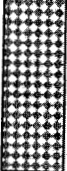
PINAL COUNTY



Map No. 12

RANGE 9 East





TOWNSHIP 4 South

 WS-02987A (8)
 Johnson Utilities, LLC
 (4)
 City of Florence (Nonjurisdictional)

 Sewer
 Sewer

DECISION NO. 74786

 (2)
 Johnson Utilities, LLC
 Docket No. WS-02987A-12-0136
 2nd Amended Application for
 Extension for Water & Sewer

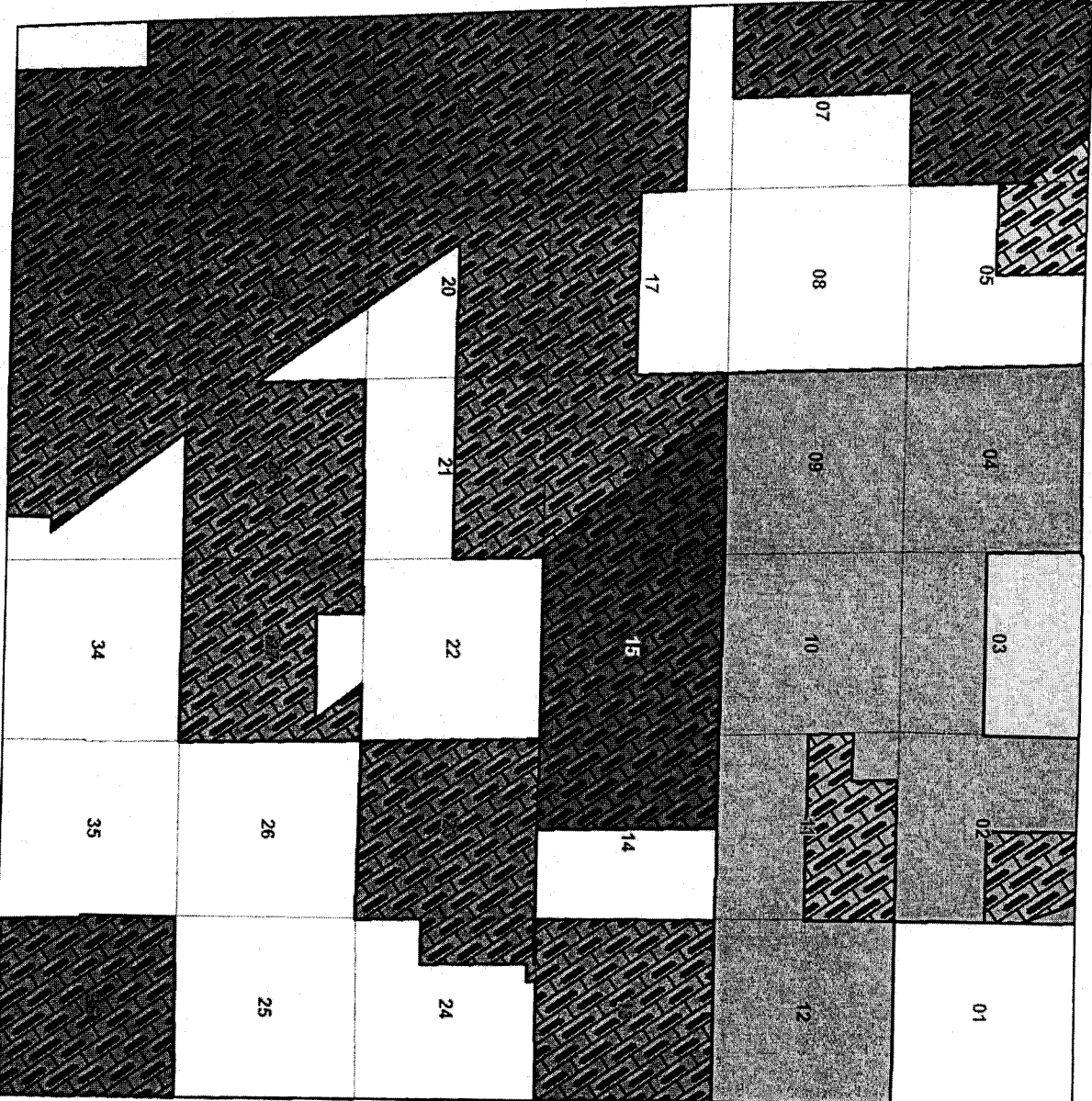
 Sewer

PINAL COUNTY

Map No. 11

DOCKET NO. WS-02987A-12-0136

RANGE 8 East



TOWNSHIP 3 South



W-02859A (3)

Diversified Water Utilities, Inc.



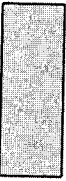
W-02234A (2)

H2O, Inc.



WS-02987A (8)

Johnson Utilities, LLC



W-02425A (2)

Sun Valley Farms Unit VI Water Company



Sewer



(2)

Johnson Utilities, LLC

Docket No. WS-02987A-12-0136

2nd Amended Application for Extension for Water Only

DECISION NO. 74786

